

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission)	
On Its Own Motion)	
Notice of Inquiry into the need for an)	
expedited hearings process for)	
complaints against an alternative gas)	04-NOI-01
supplier where the complainant seeks)	
a cease and desist order under)	
Section 19-120 of the Public Utilities)	
Act)	

REPLY COMMENTS OF THE CITIZENS UTILITY BOARD

Three parties, in addition to the Citizens Utility Board, submitted comments to the Commission's initial questions in this proceeding. One gas utility, Nicor, and one utility affiliate, Peoples Energy Services, took the position that there is no need for an expedited process. The other party, Retail Suppliers, U.S. Energy Savings Corporation (USECS), and Interstate Gas Supply of Illinois, Inc. (IGS), requested that the Commission convene a workshop to address the establishment of complaint procedures, and argued that the Commission should have a process that allows for expedited treatment of complaints.

CUB is disappointed, but not surprised, by the positions taken by Nicor and Peoples. Both utility companies have always supported competition to the extent that it benefits their affiliates, yet neither has shown a willingness to monitor these affiliates and fulfill its obligation to enforce its own tariffs. Both companies' open access tariffs prohibit fraudulent marketing, yet neither company, despite earlier commitments to the contrary, has done anything to police their respective market. Now they go a step further by opposing the type of process that would address this issue.

Competition should force companies to become more efficient, and the companies that offer the best services at the best prices should succeed. If however, companies that do not offer customers the best deals are able to win customers through misleading marketing, competitors suffer and consumers are harmed. In a market where consumers often have short windows to make a decision, and must lock in to long term contracts, it is not credible to argue that a proceeding that can take nine months or longer is fair to consumers and that there is no reason to expedite adjudication of complaints.

Nicor goes so far as to submit that an expedited hearing process “could have a chilling effect on the nascent competition in the retail gas market.” Nicor at 1. Such a statement deserves scrutiny by the Commission. If in fact an ARG sees that it is losing customers to another ARG based on that ARG’s misleading marketing, it is difficult to believe that the ARG alleging wrongdoing would not want to see the issue addressed in as short a time period as possible in order to allow it to compete fairly. Consistent with this premise, Retail Suppliers state, “The Commission should recognize that given the dynamic nature of the competitive natural gas market and the various participants in that market, it is possible that the actions of other market participants will need to be addressed on an expedited basis.” Retail Suppliers at 4. An expedited hearing process would have the opposite effect of that claimed by Nicor: it would promote competition.

Nicor also argues that, “These complaints do not rise to the level of “emergency” because the customer will continue to receive gas during the pendency of the complaint process. The relief/penalty to be awarded, if any, is not something that must be decided on an emergency basis.” Nicor at 3. The harm is not losing gas service; the harm is being denied a valid choice. Essentially, Nicor ignores the essence of the benefit of

competition to consumers, and the difficulty of measuring damages. Customers have the ability to choose the best offer amongst many offers from a variety of competitors.

Accurate measurement of damages is difficult because the consumer has not just chosen the accused ARG over the utility; they have chosen the accused ARG over all other ARGs. If in June 2004 a customer locks in to a three-year contract that turns out to be based on a misleading offer as determined in June 2005, that customer has forgone the opportunity to take all other offers available during that 12 month interim. The customer may have lost the ability to lock into a long-term contract at an affordable price, which supposedly is the great opportunity customer choice makes available to customers.

Nicor ignores another fundamental problem, *what authority does the Commission have to award damages?* To CUB's knowledge, customers must go to court to obtain financial relief.¹ Under Article 19 of the Public Utilities Act, the Commission can only penalize the company. This means that the only avenue for a customer to get financial relief would be filing a lawsuit. By limiting the ability of the Commission to award damages, the legislature sent a clear signal that the solution to misleading marketing is to deal with it up front, before customers are harmed. If the Commission takes a lengthy period to decide cases and has no authority to award damages, it limits the Commission's ability to protect consumers.

Peoples' arguments mirror those of Nicor, and Peoples points to the recent Docket No. 03-0592 (CUB's complaint against Peoples Energy Services) as evidence that the current system works and there is no need for expedited proceedings. Peoples failed to mention that after CUB filed its complaint, the company voluntarily stopped all


¹ Although this NOI process only provides for comments and replies, CUB supports giving Nicor leave to respond to this question regarding the Commission's authority to award damages.

marketing, and eventually sent a letter to customers disclosing the offer more accurately. However, the Commission cannot assume that other companies will act in a similar manner. Moreover, Peoples' argument that customers were not harmed by its actions is fundamentally flawed for the reasons discussed above. The customers who chose that offer missed the opportunity to shop for other offers that may no longer be available.

While both Peoples and Nicor are correct that the Act does not specifically authorize the Commission to expedite Section 19-120 proceedings, the Commission's authority under Article 10 states, "The Commission...shall have power to hold investigations, inquiries and hearings concerning any matters covered by the provisions of this Act, or by any other Acts relating to public utilities subject to such rules and regulations as the Commission may establish." 220 ILCS 5/10-101. Thus, the Commission has the authority to adopt whatever procedures it deems appropriate to enforce Article 19.

In the case of the Article 19 complaints, justice delayed is indeed justice denied. The Commission can set rules for expedited proceedings that preserve the rights of parties and retain flexibility to handle cases that require longer periods of time, but it needs to send the right message that misleading marketing will not be tolerated in Illinois. Ordering a company to cease and desist six months or a year later does not send that message.

Respectfully submitted,


Robert J. Kelter, Dir. of Litigation
Citizens Utility Board
208 S. LaSalle, Suite 1760
Chicago, IL 60604

Dated: September 24, 2004